

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 6, 2022

Lyle W. Cayce
Clerk

No. 22-50014
CONSOLIDATED WITH
No. 22-50015
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDMUNDO PORTILLO-RODRIGUEZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-701-1
USDC No. 4:21-CR-893-1

Before KING, COSTA, and HO, *Circuit Judges*.

PER CURIAM:*

Edmundo Portillo-Rodriguez appeals his conviction and sentence for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b), and also appeals the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-50014
c/w No. 22-50015

judgment revoking his supervised release and imposing an additional term of imprisonment. He has not briefed, and has thus abandoned, any challenge to the revocation of supervised release or to his revocation sentence. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

Portillo-Rodriguez contends for the first time on appeal that § 1326(b) is unconstitutional because it allows for the imposition of a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief in which he acknowledges that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). Portillo-Rodriguez explains that he raises this issue only to preserve it for further review.

As Portillo-Rodriguez correctly concedes, the sole claim that he raises on appeal is foreclosed by *Almendarez-Torres*. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Because summary disposition is proper, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Portillo-Rodriguez's motion is GRANTED, and the judgments of the district court are AFFIRMED.